

FILED
JUN 24 2010
By PATRICK E. DUFFY, CLERK
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

RICHARD E. SHREVES,)	CV 10-19-H-DWM-RKS
)	
Petitioner,)	
)	
vs.)	ORDER
)	
STATE OF MONTANA,)	
)	
Respondent.)	
_____)	

This matter was commenced by the filing of a Petition for Writ of Habeas Corpus on April 26, 2010. Magistrate Judge Keith Strong entered his Order and Findings and Recommendations on May 17, 2010. A § 2254 petition must “set out substantive facts that will enable the court to see a real possibility of constitutional error.” Aubut, 431 F.2d at 689. Judge Strong found that Petitioner’s claims that trial counsel was constitutionally ineffective by failing to obtain his mental health records from Idaho and by failing to investigate the

effects of the psychotropic medications he was given should be denied.

Additionally, Judge Strong found that Petitioner's claim that trial counsel failed to meet the death-penalty standards for competent counsel in his case is frivolous because it was not a death penalty case. Petitioner further asserted that he was denied the right to be present at in-chambers conferences and Judge Strong found this claim should be denied because Petitioner's speculations do not point to a real possibility of error.

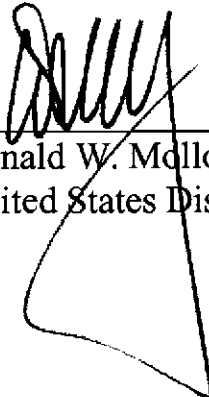
Petitioner Shreves did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong's recommendation and therefore adopt it in full.

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (dkt #1) is DENIED on the merits.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter by separate document a judgment in favor of Respondent and against Petitioner.

A certificate of appealability is not warranted and is hereby DENIED.

Dated this 24th day of June, 2010.



Donald W. Molloy, District Judge
United States District Court